they should have attendants along to care for them or to render them such assistance as they may require in the cars and to assist them from the cars at the point of their destination." [12]

From a view of the authorities and the principles involved, the holding that a passenger under some infirmity sleeping in an ordinary day coach has no more right to be awakened than any other passenger, seems eminently sound.[13] It is true that extreme circumstances known to the carrier or the unexpected development of the illness during transit may change the case,[14] but under normal conditions the mere fact of the disability creates no extra obligation upon the railroad. A recent case, *Gilkerson* v. *Atlantic Coast Line R. Co.* (S. C.), 83 S. E. 592, has gone further than most decisions and though no extenuating circumstances existed there was a recovery from the carrier. A tired passenger because of the likelihood of sleep overcoming him obtained the promise of the conductor to awaken him. He was not awakened and was carried beyond his destination. The liability of the railroad company was established upon the grounds that the passenger in being tired and giving the train official notice of the same, as a matter of right became entitled to be awakened as a part of the carrier's duty in aiding him to alight.[15]

RIGHT OF A SOCIAL CLUB TO SELL INTOXICATING LIQUOR TO ITS MEMBERS OBTAINING A LICENSE.—At first glance, the question as to the right of a social club to sell intoxicating liquor to its members without first obtaining a license would seem to be in hopeless confusion. Indeed this is the only point upon which the courts appear to have agreed. There has even been a difference of opinion as to where the weight of authority lies.[1] If we accept the *dicta* of the courts, and the expressions of text-writers and annotators as law, then it is impossible to formulate any general rules governing the subject, but fortunately the actual decisions of the courts are far from being as conflicting as those who rendered them seem to have thought.

There has been an unfortunate disagreement as to the test to be applied to these cases. Some of the courts seem to have regarded the *bona fides* of the club as controlling,[2] but the majority justly

---

[12] New Orleans, etc., Co. *v.* Stratham, *supra.*

[13] Sevier *v.* Vicksburg, etc., R. Co., *supra.*

[14] Connelly *v.* Crescent, etc., R. Co., *supra.;* McCann *v.* Newark, etc., R. Co., *supra.*

[15] The promise of the conductor to awaken a passenger riding in a day coach is beyond his authority, and the railroad company is not liable for his failure to do so. Nunn *v.* Georgia Ry. Co., *supra.*

[1] Compare BLACK., INTOXICATING LIQUORS, § 142, and the note in 10 AM. & ENG. ANN. CAS. 386.

[2] Seim *v.* State, 55 Md. 566, 39 Am. Rep. 419; and see State *v.* St. Louis Club, 125 Mo. 308, 28 S. W. 604, 26 L. R. A. 573.

reject this as inadequate.[3] Other decisions have turned upon the intent of the legislature,[4] and this rule, though disapproved by most of the courts,[5] comes very close to the true solution of the question. It has been suggested, too, that there can be no sale unless the club profits by the transaction.[6] But as has been pointed out this seems unsound, for many sales are conducted at a loss.[7] In the main, however, the courts have made little effort to really analyze the question, but have used the conflict as an excuse to follow their own predilections.

There are a few rules which have received universal recognition, and which require no comment. In the first place, it is fully settled that if the association is a mere pretext, organized to evade the license or prohibition laws of a State, town, or county, the courts will not permit it to be effective.[8] In the cases which follow, the good faith of the club was not in question. In the second case, it is agreed that since all the cases are constructions of local statutes, case and statute must be considered together, and the authority of each decision as a precedent depends very largely upon the similarity between the statute on which it is based and that before the court.[9]

An examination of these statutes reveals the fact that they may be divided roughly into two classes. In the first of these, a license is required as a prerequisite to engaging in the business of selling, while in the second a license must be obtained before selling liquor.[10] It is the failure to notice the difference in intent and wording between these two which has given rise to most of the confusion on this subject. In all the cases where it was held that the club should not be required to take out a license, the statutes seem to fall into the first of the above classes,[11] and no court seems to have held that a *bona fide* club was in the business of selling liquor

---

[3] People *v.* Soule, 74 Mich. 250, 41 N. W. 908, 2 L. R. A. 494; State *v.* Lockyear, 95 N. C. 633.

[4] People *v.* Adelphi Club, 149 N. Y. 5, 43 N. E. 410, 52 Am. St. Rep. 700; Klein *v.* Livingstone Club, 177 Pa. 224, 35 Atl. 606, 55 Am. St. Rep. 717, 34 L. R. A. 94.

[5] Manning *v.* Canon City, 45 Col. 571, 101 Pac. 978, 23 L. R. A. (N. S.) 192; People *v.* Law and Order Club, 203 Ill. 127, 67 N. E. 855.

[6] Tennessee Club *v.* Dwyer, 11 Lea 452, 47 Am. Rep. 298.

[7] State *v.* Neis, 108 N. C. 787, 13 S. E. 225, 12 L. R. A. 412.

[8] Commonwealth *v.* Jacobs, 152 Mass. 276, 25 N. E. 463; Canon City Labor Club *v.* People, 21 Col. App. 37, 121 Pac. 120.

[9] State *v.* Minnesota Club, 106 Minn. 515, 119 N. W. 494, 20 L. R. A. (N. S.) 1101; State *v.* Missouri Athletic Club (Mo.), 170 S. W. 804 (principal case).

[10] State *v.* University Club, 35 Nev. 475, 130 Pac. 468, 44 L. R. A. (N. S.) 1026. This seems to be the first case where the court, ignoring all other considerations, clearly bases its decision upon the distinction suggested above.

[11] State ex rel. Boston Club *v.* Fitzpatrick, 131 La. 1079, 60 So. 691, 43 L. R. A. (N. S.) 608; Cuznor *v.* California Club, 155 Cal. 303, 100 Pac. 868, 20 L. R. A. (N. S.) 1095; Barden *v.* Montana Club, 10 Mont. 330, 25 Pac. 1042, 24 Am. St. Rep. 27, 11 L. R. A. 593.

to its members.[12] The second class presents more complicating features, and requires a more extended discussion.

Where the statutes forbid the selling of liquor without a license, the cases arising under them may be further divided into two types: First, where the club was *incorporated;* and, second where it was *unincorporated.* In the case of unincorporated clubs, the weight of authority is that no sale takes place. The officer ordering and dispensing the liquor acts simply as the agent of the members. Title to the liquor is in the members, and each withdraws his own property from a common and identical store. When he contributes his share of the expense is immaterial.[13] These cases resting upon the maxim *qui facit per alium, facit per se,* seem sound.

When the club is incorporated an altogether different state of facts appear. Here title to liquor bought by the club vests in it, and when it sells through its agents to its members, all the technical elements of a sale are present. In all the cases which have arisen under these facts, the club has been required to procure a license, or to abandon its sales.[14] It may be noted that all the cases arising under the Federal statutes seem to fall within this class.[15]

A few of the cases must be regarded as anomalous. In several of the States it has been held that circumstances attending the passage of statutes requiring a license to sell liquor made it plain that the intention of the legislature was simply to require a license for the business of selling.[16] The cases which so hold, though frequently cited as exceptions to the rule governing the second class of statutes, in reality should be grouped as examples of the first class, and follow the rule governing it. One case arose under a statute making possession of a United States license *prima facie* proof that the club was engaged in handling liquor for sale, and the possession of such a license served to turn the scale against the club.[17] In

---

[12] But see Marmont *v.* State, 48 Ind. 21. The statute under which this case was decided is not set forth by the decision. If, as the court suggests, it forbade a sale for gain on Sunday, its soundness may well be doubted.

[13] Commonwealth *v.* Smith, 102 Mass. 144; Commonwealth *v.* Pomphret, 137 Mass. 564. And see 24 HARV. L. REV. 503, where this principle is discussed and approved.

[14] South Shore Country Club *v.* People, 228 Ill. 75, 81 N. E. 805, 119 Am. St. Rep. 417, 10 Am. & Eng. Ann. Cas. 383, 12 L. R. A. (N. S.) 519; Manning *v.* Canon City, *supra;* County of Ada *v.* Boise Commercial Club, 20 Idaho 421, 118 Pac. 1086, 38 L. R. A. (N. S.) 101; State *v.* Missouri Athletic Club, *supra.* But see State *v.* Colonial Club, 154 N. C. 177, 69 S. E. 771, where it was held that the club officials who ordered the liquor acted as agents for the club members, so that title never vested in the club.

[15] United States *v.* Alexis Club, 98 Fed. 725; Army & Navy Club *v.* District of Columbia, 8 App. Cas. (D. C.) 544. This last case was expressly decided on the ground that title to the liquor was in the club.

[16] Klein *v.* Livingstone Club, *supra;* State *v.* Duke, 104 Tex. 355, 137 S. W. 654; People *v.* Adelphi Club, *supra.*

[17] Hermitage Club *v.* Shelton, 104 Tenn. 101, 56 S. W. 838, and the discussion of this case in Moriarty *v.* State, 122 Tenn. 440, 124 S. W. 1016, 25 L. R. A. (N. S.) 1252.

others, the statutes applied expressly to the clubs, leaving the courts no option but to enforce them.[18] In a few cases it would seem that the courts mistook the principles properly applicable to the case before them.[19]

The last point arising in connection with this question, is what construction should be applied to these statutes, and here the conflict seems to be direct and irreconcilable. Since most of the statutes prescribe a penalty for failure to comply with their requirements, a majority of the courts have held them to be penal, and as such to be strictly construed.[20] In the recent case of *State* v. *Missouri Athletic Club* (Mo.), 170 S. W. 904,[21] it was held that they were really remedial, and should be construed liberally to give effect to the legislative intent and to rectify the evils which occasioned their passage. In that case the statute forbade a sale of liquor without a license; the defendant was an incorporated club. The court, while not seeming to recognize the principles laid down above, held properly that it was subject to the terms of the statute, and would be compelled to comply with them or forfeit its charter, and this though it was impossible for the club to obtain a license under the license laws. It would seem that the true rule to govern these constructions should be the public policy of the State where the question arises. If the needs and wishes of the people, of which that policy is the expression, include social clubs within the meaning of the statute, then the statute should be held applicable to them. It may be conceded that this test would be subject to variation, even in the same State at different times, but by means of it the law would be more responsive to the spirit of the time, and it should not prove difficult of application to any case which might come before the courts.

VIOLATIONS OF FEDERAL PEONAGE LAWS BY STATE STATUTES.—The Thirteenth Amendment to the Federal Constitution provides that "neither slavery nor involuntary servitude, except as a punishment for crime of which the party shall have been duly convicted, shall exist within the United States or. any place subject to their jurisdiction," and it further gives Congress power to enforce its provisions by appropriate legislation. The language of this amendment is very broad. While the Fourteenth Amendment serves as a restriction only on action on the part of the States, the thirteenth

[18] Bachelors Club *v.* City of Woodburn, 60 Or. 331, 119 Pac. 339; Commonwealth *v.* Baker, 152 Mass. 337, 25 N. E. 718.

[19] Commonwealth *v.* Ewig, 145 Mass. 119, 13 N. E. 365; Columbia Club *v.* McMaster, 35 S. C. 1, 28 Am. St. Rep. 826. This case may have been decided on the ground that the statutory grant to the city was insufficient to warrant the ordinance in question. The discussion is not very clear.

[20] State *v.* Duke, *supra;* Klein *v.* Livingstone Club, *supra.*

[21] Overruling State *v.* St. Louis Club, *supra,* long cited as one of the leading cases on this subject, "as far as the two are inconsistent."